

MARKET CONDUCT EXAMINATION REPORT
AS OF December 31, 2005

ING USA Annuity and Life Insurance Company
909 Locust Street
Des Moines, IA 50309

NAIC Company Code: 80942
NAIC Group No: 0229
Colorado Company No: 19871952707

EXAMINATION PERFORMED
for the
STATE OF COLORADO
DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

**ING USA Annuity and Life Insurance Company
909 Locust Street
Des Moines, IA 50309**

**MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2005**

Examination Performed by

Stephen E. King, CIE

Independent Market Conduct Examiner

November 30, 2006

The Honorable David F. Rivera
Insurance Commissioner
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner:

A market conduct examination of ING USA Annuity and Life Insurance Company was conducted in accordance with §§10-1-203 and 10-3-1106, Colorado Revised Statutes. This examination focused on the Company's annuity business. Examiners completed a review of underwriting, rating, policyholder service, marketing and sales and claims practices. The records/files were examined at the Company's headquarters, located at 909 Locust Street, Des Moines, IA 50309.

The time period covered by the examination was from January 1, 2005 through December 31, 2005.

The results of the examination, herein, are respectfully submitted.

Stephen E. King, CIE

**MARKET CONDUCT
EXAMINATION REPORT
OF THE
ING USA ANNUITY AND LIFE INSURANCE COMPANY**

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COMPANY PROFILE

ING USA Annuity and Life Insurance Company (hereinafter referred to as “ING USA” or “Company”) is a stock life insurance company domiciled in the state of Iowa and provides financial products and services in the United States. ING USA is authorized to conduct its insurance business in all states, except New York, and the District of Columbia. The Company was granted a Colorado license and began operations in Colorado on March 7, 1973.

ING USA is a direct, wholly-owned subsidiary of Lion Connecticut Holdings Inc., which is an indirect wholly-owned subsidiary of ING Groep N.V. (hereinafter referred to as “ING”). ING is a global financial services holding company based in the Netherlands, with American Depositary Shares listed on the New York Stock Exchange under the symbol “ING”.

On January 1, 2004, the Company simultaneously re-domesticated from Delaware to Iowa, changed its name from Golden American Life Insurance Company to ING USA Annuity and Life Insurance Company and merged the following affiliates into the Company: Equitable Life Insurance Company of Iowa (hereinafter referred to as “Equitable Life”), USG Annuity & Life Company, and United Life & Annuity Insurance Company. Prior to the merger date, ING USA was a wholly-owned subsidiary of Equitable Life.

COMPANY OPERATIONS AND MANAGEMENT

ING USA’s primary annuity customers are retail consumers. The Company’s annuity products are distributed by national wirehouses, regional securities firms, independent National Association of Securities Dealers, Inc. (“NASD”) firms with licensed registered representatives, banks, life insurance companies with captive agency sales forces, independent insurance agents, independent marketing organizations, and the ING broker-dealer network.

As of December 31, 2005, the Company’s annuity business represented a 3.3%* share of the Colorado annuity market, based upon considerations totaling \$133,857,000*. The Company’s life insurance business represented a 0.07% * share of the Colorado life insurance market, with direct premiums totaling \$1,200,000*.

*Data as reported by the NAIC and published as the “Combined Market Share Report”.

PURPOSE AND SCOPE OF EXAMINATION

An independent examiner, contracting with the Colorado Division of Insurance (Division), in accordance with Colorado insurance laws, §§ 10-1-201, 10-1-203 and 10-1-204 C.R.S., which allows the Commissioner the discretion and authority to schedule and conduct examinations for the purpose of auditing the business practices of insurers, reviewed certain business practices of the Company. All work products developed in the production of this report are the sole property of the Division.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law related to annuity business. Examination information contained in this report should serve only this purpose. The conclusions and findings of this examination are public record.

The examiner conducted the examination in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners. The examiner relied primarily on records and materials maintained and submitted by the Company, generally covering the examination period from January 1, 2005, through December 31, 2005.

The examination included review of the following:

- Company Operations / Management
- Marketing and Sales
- Complaints
- Producers
- Underwriting - Forms / Policyholder Services
- New Business Underwriting Practices and Rating
- Underwriting - Cancellations/Surrenders/Declinations/Rescissions
- Claims

This examination report is a report written by exception. References to any practices, procedures or files, that contained no improprieties, were omitted. Therefore, the majority of the material reviewed may not be addressed in this report. In the course of the examination, the examiner issued the Company examination memorandums and comment forms, to obtain specific information and/or address noted discrepancies. When the examiner issues either form, the Company is required to provide a detailed response, within a specified time frame. Generally, only the comment form will be used to cite a specific statute or regulation, when a potential non-compliant situation is identified.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed, in most cases, where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When utilizing a sampling technique to select a sample file population for review, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic or if, as a result of the file selection process, it was not possible to determine an exception percentage, an error tolerance percentage was not utilized. Also, if more than one sample population was reviewed in a particular area of the examination (e.g., timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

Examination findings may result in administrative action by the Division. During the course of the examination, all unacceptable or non-complying practices of the Company may not have been discovered. However, failing to identify specific Company practices does not constitute acceptance of such practices. The contents of this report should not be construed to either endorse or discredit any insurance company or product.

EXAMINER'S METHODOLOGY

In accordance with §10-1-203, C.R.S., the examiner reviewed the Company's business practices to determine compliance with Colorado insurance laws and regulations, as they pertain to annuity operations, as shown below.

Statute/Regulation	Concerning
Sections 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration.
Sections 10-2-103 to 10-2-503, C.R.S.	Licenses – General Provisions, Prelicensure Education, Continuing Education, Licensing and Appointment of Insurance Producers, and Nonresident Licenses
Sections 10-2-701 to 10-2-704, C.R.S.	Licenses – Business Conduct of Licensees
Sections 10-2-1001 to 10-2-1101, C.R.S.	Managing General Agents Act
Section 10-3-105, C.R.S.	Certificate of authority to do business – companies prohibited.
Section 10-3-109, C.R.S.	Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failing, to maintain.
Sections 10-3-1101 to 10-3-1104, C.R.S.	Unfair Competition – Deceptive Practices
Sections 10-7-102 to 10-7-109, C.R.S.	Individual Life Insurance Policy Provisions
Section 10-7-112, C.R.S.	Interest payable on benefits or proceeds.
Section 10-7-113, C.R.S.	Acceleration of benefits.
Section 10-7-302, C.R.S.	Compulsory policy provisions.
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Insurance Regulation 1-2-7	Concerning Managing General Agents
Insurance Regulation 1-2-9	Fees Charged by Producers
Insurance Regulation 1-2-10	Concerning the Regulation of Insurance Producers by the Colorado Division of Insurance: Colorado Producer Licensing Model Act
Insurance Regulation 2-1-7	Concerning Issuance of a Certificate of Authority

Insurance Regulation 4-1-1	Variable Annuity Contracts
Insurance Regulation 4-1-2	Advertising and Sales Promotion of Life Insurance
Insurance Regulation 4-1-3	Variable Life Insurance
Insurance Regulation 4-1-4	Replacement of Life Insurance or Annuity Contracts
Insurance Regulation 4-1-5	Permitting Same Minimum Nonforfeiture Standards for Men and Women Insured Under 1980 CSO and 1980 CET Mortality Tables
Insurance Regulation 4-1-8	Concerning the Disclosure Requirements for Life Insurance Illustrations
Insurance Regulation 4-1-11	Concerning Senior Protection in Annuity Transactions
Insurance Regulation 4-2-9	Concerning Non-Discriminatory Treatment of Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Related Illness by Insurers of Life and Health Insurance
Insurance Regulation 6-1-1	Limiting Coverage
Insurance Regulation 6-2-1	Complaint Record Maintenance

Company Operations/Management

The examiner verified the Certificate of Authority and reviewed Company management, administrative controls, as well as record retention practices.

The Company's cooperation during the course of the examination was noted.

Marketing and Sales

The examiner reviewed a randomly selected sample of fifty (50) pieces of fixed annuity advertising, from a population of 113 advertising pieces.

The content of the material was reviewed to ensure compliance with Colorado insurance law and to verify that the Company's products were accurately represented.

Complaints

The examiner reviewed all four (4) complaints received by the Company during the examination period to ensure accuracy of the file information, as well as the timeliness of the response to the consumer.

Producers

The examiner reviewed producer contracts and commission structures used during the examination period.

Underwriting – Forms/Policyholder Services

All of the Company's annuity contracts and forms for which there was inforce business during the examination period were reviewed to verify compliance with Colorado insurance laws.

New Business Underwriting Practices and Rating

The examiner randomly selected a sample of fifty (50) fixed annuity external replacements from a population of 152, and a sample of fifty (50) fixed annuity new business files from a population of 509.

The examiner also reviewed all six (6) fixed annuity internal replacements.

Underwriting – Cancellations/Surrenders/Declines/Rescissions

The examiner randomly selected a sample of fifty (50) surrendered fixed annuity files, from a population of 513, and reviewed all thirty-six (36) declined fixed annuity files.

Each file was reviewed to ensure that fair and consistent underwriting practices were used, timely notifications were provided, and required premium refunds were timely and accurate.

Claims

The examiner randomly selected a sample of fifty (50) fixed annuity paid claims files from a population of eighty eight (88).

The Company's claims handling guidelines were also reviewed. Additionally, specific claim file information was evaluated to determine timeliness of processing and accuracy of payment.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of four (4) findings in which the Company did not appear to be in compliance with Colorado insurance law. The following summarizes the examiner's findings.

Company Operations/Management: In the area of Company Operations and Management, no compliance issues or concerns were identified and thus are not addressed in this report.

Marketing and Sales: In the area of Marketing and Sales, the examiner found one (1) area of concern.

The issue identified is:

- Failure to provide broker/dealers and registered representatives, at least annually, a notification of the requirement to obtain Company approval of all advertisements prior to use and the most serious consequence when not obtaining such approval.

Producers: In the area of Producers, no compliance issues or concerns were identified and thus are not addressed in this report.

Underwriting – Forms/Policyholder Services: In the area of Forms and Policyholder Services, no compliance issues or concerns were identified and thus are not addressed in this report.

New Business Underwriting Practices and Rating: In the area of New Business Underwriting Practices and Rating, the examiner found one (1) area of concern. The issue identified is:

- Failure to make reasonable efforts to obtain suitability information, and failure to develop and maintain an adequate system to supervise and monitor the recommendations of authorized producers to ensure compliance with Colorado Insurance Regulation 4-1-11.

Underwriting – Cancellations/Surrenders/Declinations/Rescissions: In the area of Cancellations/Surrenders/Declinations/Rescissions, the examiner found one (1) area of concern. The issue identified is:

- Failure, in some cases, to advise the contract owner of the right to receive information regarding the existing policy or contract values.

Claims: In the area of Claims, the examiner found one (1) area of concern. The issue identified is:

- Failure to calculate interest up to the date that death benefits were actually paid.

Results of previous market conduct examinations are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Division.

MARKET CONDUCT EXAMINATION REPORT

FACTUAL FINDINGS

<p><u>MARKETING AND SALES</u></p>
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Issue B1: Failure, to provide broker/dealers and registered representatives, at least annually, a notification of the requirement to obtain Company approval of all advertisements prior to use and the most serious consequence when not obtaining such approval.

Colorado Insurance Regulation 4-1-2, Advertising and Sales Promotion of Life Insurance, promulgated under the authority of §§10-1-108(8), 10-1-109 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states in part:

Section 3. Scope

- B. All of the insurer's advertisements, regardless of by whom written, created or presented the advertisement, shall be the responsibility of the insurer whose policies are advertised. Every insurer shall establish and, at all times, maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to producers, brokers and others authorized by the insurer to disseminate advertisements of the requirement and procedures for company approval prior to the use of any advertisements that is not furnished by the insurer and that clearly sets forth within the notice the most serious consequence of not obtaining the required prior approval.

The Company did not provide the required annual notification to contracted broker/dealers, or the representatives contracted with those broker/dealers, setting forth the advertisement approval requirement and the most serious consequence of not obtaining such approval.

Recommendation No. 1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 4-1-2. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance law.

<p><u>NEW BUSINESS UNDERWRITING PRACTICES AND RATING</u></p>

Issue G1: Failure to make reasonable efforts to obtain suitability information, and failure to develop and maintain an adequate system to supervise and monitor the recommendations of authorized producers to ensure compliance with Colorado Insurance Regulation 4-1-11.

Colorado Insurance Regulation 4-1-11, Concerning Senior Protection in Annuity Transactions, states in part:

Section 5. Duties of Insurers and of Insurance Producers

- A. In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.
- B. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:
 - (1) The senior consumer's financial status;
 - (2) The senior consumer's tax status;
 - (3) The senior consumer's investment objectives; and
 - (4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.
- D. (1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:
 - (a) Maintaining written procedures; and
 - (b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.
- (2) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:

- (a) Maintaining written procedures; and
- (b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

The Company requires the “Suitability Acknowledgement” (form 132860), to be submitted with the annuity application and it is considered an important part of the Company’s required written procedures. However, as designed, this form does not elicit suitability information from the senior consumer, such as:

- The senior consumer’s financial status;
 - The senior consumer’s tax status;
 - The senior consumer’s investment objectives; and
 - Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.
- Basically, the form requires only the name of the applicant and the producer’s signature.

Neglecting to have such documented information creates a circumstance inadequate to confirm that the recommendations of the Company’s authorized producers were appropriate regarding the suitability of the annuity products sold.

In addition, during the period of the examination, the Company had conducted no periodic reviews of its records to assist in detecting and preventing violations of Colorado Insurance Regulation 4-1-11.

Recommendation No. 2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 4-1-11. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance law.

<u>UNDERWRITING – CANCELLATIONS/SURRENDERS/DECLINATIONS/RESCISSIONS</u>
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Issue H1: Failure, in some cases, to advise the contract owner of the right to receive information regarding the existing policy or contract values.

Colorado Insurance Regulation 4-1-4 Replacement of Life Insurance Policies and Annuities, states in part:

Section 8. Duties of the Existing Insurer

Where a replacement is involved in the transaction, the existing insurer shall:

- A. Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five (5) years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.
- B. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.
- C. Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

Surrendered Fixed Annuity Contracts

Population	Sample Size	Number of Exceptions	Percentage to Sample
513	50	4	8%

A review was conducted of fifty (50) randomly selected surrendered fixed annuity files, representing approximately 10% of the fixed annuity contracts surrendered during the examination period.

In four (4) instances, the Company failed to notify the contract owner of the right to receive existing policy or contract values. This finding represents 8% of the sample.

In March 2006, a project was initiated by the Company to update the Company's administrative systems. On October 20, 2006, the Company implemented the system changes to comply with Colorado Insurance Regulation 4-1-4.

Recommendation No. 3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4.

<p><u>CLAIMS</u></p>

Issue J1: Failure to calculate interest up to the date that death benefits were actually paid.

Section 10-7-112, C.R.S. Interest payable on benefits or proceeds, states in part:

- (1) Notwithstanding any other provision of law, each insurer admitted to transact the business of life insurance in this state shall pay interest on the death benefits using an interest rate that is not less than the rate of interest for proceeds left on deposit with the insurer and subject to withdrawal on demand for the period beginning at the date of death through thirty days following the date of receipt by the insurer of a complete request for payout including due proof of death. From that date until the date of settlement of the claim, the annual rate of interest shall be two percentage points above the federal discount rate, which rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security and shall be rounded to the nearest full percent...

The Company failed to apply interest up to the date that death benefits were actually paid, e.g. mailed. As a result of the Company's internal processing, the disbursement and actual issuance of the check is completed through an overnight batch cycle. The check is then printed the following business day and is mailed that day. Interest is calculated using the date of the check request (the day before it is mailed), as opposed to using the mailing date. As a result of this process, the Company does not include an additional day of interest. Additionally, when the circumstances require that a check request is completed on Friday, the check is not mailed until Monday, thus not including three (3) days of interest (four (4) days interest when a holiday is involved).

Recommendation No. 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-7-112, C.R.S. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance law.

SUMMARY OF ISSUES AND RECOMMENDATIONS

ISSUES	Rec. No.	Page No.
MARKETING AND SALES		
Issue B1: Failure to provide broker/dealers and registered representatives, at least annually, a notification of the requirement to obtain Company approval of all advertisements prior to use and the most serious consequence when not obtaining such approval.	1	15
NEW BUSINESS UNDERWRITING PRACTICES AND RATING		
Issue G1: Failure to make reasonable efforts to obtain suitability information, and failure to develop and maintain an adequate system to supervise and monitor the recommendations of authorized producers to ensure compliance with Colorado Insurance Regulation 4-1-11.	2	18
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